

Sex-selective abortion

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Sex-selective abortion

Gender, culture and Dutch public policy

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INTRODUCTION

When, in 1973, race relations researcher Christopher Bagley visited the Netherlands, he praised the Dutch for their tolerance and enthusiastically reported that the British could learn something from them (Bagley, 1973). Thirty years later, in July 2003, the British advisor on immigration and integration, Trevor Phillips, paid a visit to the Netherlands. His judgement was less positive. He was shocked by the intolerance in the Netherlands, in particular by the negative policy concerning immigrants. He thereby referred to the intended policy, amongst others, to prohibit the wearing of *hijab* in some schools and to a policy intention to combat arranged marriages.¹ 'It was, as if I was smacked in the face', said Phillips. According to him the intended policies were inadmissible infringements upon immigrants' privacy.² He suspected that the Dutch were suffering from a post Pim Fortuyn (the recently assassinated far-right politician) trauma (De Waard, 2003).³

Polls do indeed point to a hardening of the Dutch public opinion about immigrants (Dagevos et al., 2003: 432, 433).⁴ There is also, from the part of the government, less willingness to recognize the cultural claims of minorities and a more compelling demand to adjust to Dutch culture (e.g. own language teaching is no longer state facilitated and citizenship education is made compulsory for immigrants). So, yes, Phillips is right that Dutch tolerance is decreasing. Yet, does that make policy that interferes with the cultural traditions of minority groups always a sign of intolerance and an inadmissible infringement of their freedom? I do not think so.

It has been pointed out, most prominently by Susan Moller Okin (1999),

that recognition of cultural diversity can be at odds with women's rights, in which case interference might be justified. Yet, the issue is more complex than that. As a feminist at home with postcolonial theory, I find it impossible to ignore the long western tradition of representing other cultures as inferior. In particular, there is the continued imagery of Islam as a religion predisposed to maltreat the female sex. In the present Dutch climate of increased intolerance of minority groups, a concern with gender inequality could be merely a proxy for attacks on minority groups. It would be tragic, though, if our commitment to multicultural respect would keep us from recognizing gender injustice. The challenge is hence to be critical, yet not to add to the further demonization of minority groups. In this article, I will try to demonstrate that taking a critical stance against minority cultural practices can go together with a sensitivity to the cultural identities and interests of minority women.

I shall present a case that was hotly discussed in the Netherlands, i.e. the case of sex-selective abortion (hereafter SSA). My main reason for focusing on this particular case is that, in it, multiculturalism and feminism seem so clearly to be at loggerheads. Yet, they are not, so I shall argue. This case helps me hence to sustain my position that (a) it is important to be alert that policies that accommodate minority cultures do not add to the oppression of female group members, (b) yet, we should not pit a priori multicultural and feminist concerns against each other, and (c) our judgement of cultural practices should take into account the wider social context in which they exist. In this latter claim, I am inspired by the so-called contextual approach to tolerance, and my discussion of the case may also be read as a plea for contextualism.

Second, I choose this case, because of its possible relevance for other countries as well. As I shall discuss later, the pre-natal diagnostic techniques that are required for sex determination of the foetus are also available in other European countries and the abortion legislation in most European countries is such that it makes SSA possible.

My third reason to work out this case is that it illustrates how predominant in public discourse the modernization thesis still is – contrasting culture, tradition and oppression with modernity, rationality and liberalization – and at the same time how inapt this thesis is for understanding multicultural conflict. The effect of this cultural imagery is that minority women get reduced to mere prisoners of their culture. Yet requests for SSA are made by women. If one is not willing, as I am, to merely see them as cultural dupes, how then are we to consider these requests? What is also at issue, therefore, in the case I shall present, is the moral agency of the women concerned.

CONTEXTUALIZED MORALITY

Before I discuss the case of SSA, let me briefly explain my theoretical perspective.⁵

In the past decade we have seen, in particular in the field of multiculturalism, a proliferation of philosophical theories that try to connect normative theory with empirical case studies. A common ambition of authors as varied as Walzer (1983), Kymlicka (1995), Carens (2000), Parekh (2000) or Benhabib (2002) is to put political philosophy to work in the empirical context of contemporary plural societies and to develop theory that is of relevance for contemporary social conflicts and policy dilemmas. It might not be overstated to call this the contextual turn in political philosophy.

Why should context count? The contextual turn is, amongst others, inspired by the realization that liberal principles are general principles and, as such, too indeterminate to lead to a judgement in specific cases (see Carens, 2000; Parekh, 2000). Moreover, in particular cases, it often turns out that liberal justice arguments provide both strong foundations for accommodating cultural minorities and strong reasons for drawing limits to tolerance. To put it differently, liberal principles often pull against each other (see Williams, 2000). 'We may all claim that we respect one another', so writes Seyla Benhabib, 'but we cannot know what such respect requires or entails in the face of deep cultural conflicts' as very often 'we do not share a common understanding of the disputed practice itself'. Therefore, what we need to reach is 'not only understanding of the norms in question, but a *situational* understanding of these norms' intended applications' (Benhabib, 2002: 12, emphasis in original). Hence, 'to determine what justice requires in a particular case', writes Joseph Carens, 'one must immerse oneself in the details of the case and make contextually sensitive judgements rather than rely primarily on the application of abstract general principles' (2000: 14). And hence, 'history matters, numbers matter, the relative importance of the claims of the claimants matter, and so do many other considerations' (2000: 12). From this follows, first, that while in the classical deductive way of moral arguing only justice arguments are allowed, in a contextual approach, non-moral arguments, like Carens's numbers or the actual power relations in which a practice takes place, are also allowed and may co-determine our moral considerations. Second, if context counts, it follows that what may be an acceptable arrangement in one society, may not be so in other societies (see Carens, 2000: 7).

SEX-SELECTIVE ABORTION: LEGAL CONTEXT

In 1997, a debate took place in the Netherlands in which it was assumed, at least by some of the participants, that certain cultural minorities have a cultural preference for sons. Based on this preference, they may desire SSA. SSA involves the identification of the foetus's sex during the pregnancy using pre-natal diagnosis, followed by abortion of the foetus if it proves to be of the undesired sex.⁶ The overture to this discussion was a television programme, the implication of which was that abortion is too easy in the Netherlands. In the programme, two abortion practitioners stated that they refrained from any moral judgement and accepted any motive underlying a woman's wish for an abortion. Moreover, these doctors stated that the fact that the foetus was the 'wrong' sex was no reason to refuse a termination. The debate was further fuelled when the Minister of Health intervened with a clear statement that she considered SSA permissible in the Netherlands. The public debate then concentrated on the Minister's statement.

If SSA is to be applied, the sex of the foetus has first to be determined. SSA is thus closely related to the rise of pre-natal diagnosis (PND) in genetics, notably chorionic villus sampling, amniocentesis or ultrasound.⁷

In general, pre-natal diagnosis and selective abortion are driven by the desire to prevent illness. As some illnesses are sex-linked, the debate in medical ethics concerns what genetic diseases or congenital anomalies are so serious that they justify PND and selective abortion. As the sex of a child is not in itself considered an illness, sex can never be a justification for PND and abortion in medical ethics. The policy of the professional groups involved in PND in the Netherlands, and in European countries generally, is therefore not to grant requests for sex-selective tests. It is still possible, however, to discover the sex of the foetus. From 36 years onwards – 35 years in most other European countries – age is a valid medical indication for chorionic villus sampling or amniocentesis. It is common practice among genetic counsellors to inform the woman concerned of the foetus's sex when she is told about the presence or absence of a disorder or anomaly. In regular healthcare, ultrasound is carried out on medical indication only. The policy here is not to disclose the foetus's sex, because determining sex using ultrasound is less dependable than through the other two techniques. However, women of any age can go to a private clinic which will perform ultrasound scanning on request. No medical indication is required, and these clinics are usually willing to disclose the sex of the foetus. It is, therefore, technically possible, and depending on the mother's age or the technique used, legally permissible to determine the sex of the foetus.⁸

According to Dutch law, abortion is only permitted if there is risk to the mother's life or health, or if the woman is in a critical situation which cannot

be resolved in any other way. This 'critical situation' includes psychosocial distress. As it proved impossible to formulate general criteria for the definition of a critical situation, the legislature sought refuge in procedural measures to guarantee cautious decision making in individual cases. The woman is legally obliged to take five days' time to reflect. The practitioner is responsible for determining through interview whether the woman is genuinely convinced that an abortion is the only way to resolve the problem and to inform her about alternatives to abortion.⁹ Because the law does not define what constitutes a critical situation, ultimately it is the woman who decides, thus making SSA legally possible. In most European countries women have, as in the Netherlands, a legal right to decide on the termination of pregnancy, or the abortion laws in these countries recognize rather broad grounds for permitting abortion, including sociomedical reasons, like the UK (except Northern Ireland) (Outshoorn, 1996). As the Netherlands is, compared with other European countries, rather reluctant in offering PND to pregnant women, it follows that SSA is legally possible in most European countries (Hui, 2003).

THE PUBLIC DEBATE

The question of whether Dutch law on abortion is too liberal thus boils down to the question of whether the definition of a critical situation is too liberal. The then Dutch Minister of Health, Els Borst, made the following statement during a television program on 17 January 1997, which was widely reported in the press:

I can imagine that a woman from a foreign culture finds herself in such a critical situation when she has a daughter for the third or fourth time and her marriage, or even her life, is at stake. (*De Volkskrant*, 1997a)

She adhered to this statement during questions in parliament. Ms Borst, as a reputed feminist and liberal, repeated: 'I can imagine a critical situation like that, and it's not easy for me to say this' (*De Volkskrant*, 1997c).

Her statement provoked considerable reaction.¹⁰ Unsurprisingly, these were predominantly negative. Many Christians reject the notion of abortion altogether; some believe it should be allowed only if the life or health of the mother is threatened. Many saw the issue as yet another example of legislative deficiencies in protecting unborn life. The president of the Dutch Society of Abortion Practitioners, Dr Beekhuizen, pointed out that moral dilemmas about abortion are closely related to developments in pre-natal diagnosis. Beekhuizen opined that when pre-natal testing is done, only medically relevant information should be transmitted to the woman. This information would not generally include the sex of the foetus. Due to his

steadfast belief in sexual equality, he found SSA difficult to perform (Trouw, 1997). Numerous other participants in the debate argued that the Minister's policy clearly overstepped a boundary. They advanced arguments pointing to the fact that whilst some immigrants may prefer a son to a daughter, this preference does not lead them to consider SSA as an option and that, in practice, it does not appear to occur. It was further alleged that in the absence of evidence, speculation functions to stigmatize immigrant groups. The joint national organizations of and for black, migrant and refugee women, and the Vrouwenberaad Ontwikkelingssamenwerking (Women's Council on Development Aid), sent an open letter to the Minister (Vrouwenberaad Ontwikkelingssamenwerking, AISA, TARGUIA and TIYE International, 1997). This letter pointed out that the Minister's statements betrayed a misplaced cultural relativism. They claimed that the right of self-determination and the principle of non-discrimination on the basis of sex are universal. Consequently, whenever a local culture or tradition is in conflict with these principles, the principles should be respected above tradition. The signatories to the open letter added that the Minister's statement showed a rigid notion of culture; it appeared to indicate cultures cannot change, or that everyone thinks in the same way about his or her culture, or that minority women do not oppose certain misogynous traditions within their own cultures. The Minister's statement, according to the open letter, is thus 'a smack in the face for many women in the Netherlands who campaign for gender equality and equivalence in their own community'. The women's organizations that signed the open letter wanted to retain intact the right to self-determination, but they also considered that the principle of sexual equality should not be made relative. It is unclear whether they failed to see the contradiction, as clearly one cannot have both here, or thought that women do not voluntarily choose a SSA, as a columnist in a national newspaper (*NRC Handelsblad*), Anil Ramdas, assumed (Ramdas, 1997). He argued that it would seem in this case as if individual freedom (the woman decides, for example, not to have a daughter) clashes with the principle of equality between men and women. But, he continued, it only *seems* that way. If a woman does not want a child because she does not want to interrupt her career, or because she is unemployed and will have to take care of the child entirely by herself, then these are critical situations experienced as such by the individual. What we think about these personal motives is irrelevant: 'If the motive is serious enough for her, who are we to contradict her?' The situation is different, he argued, in the case of a Muslim woman who does not want any more girls. In that case 'it is not a matter of an individual desire, but of a culturally imposed demand: thou shalt bear males', and, according to Ramdas, we should not sympathize. This wish is the result of the 'male chauvinism of Islam' and should therefore be rejected. What is more, by showing sympathy, 'the Minister abandons Islamic women and sticks a knife into the back of the

incipient emancipation movement in that culture' (Ramdas, 1997). So, although he followed a somewhat different route, Ramdas came to the same conclusion as the signatories of the open letter. The opponents of Borst's cultural relativism were also in agreement on the solutions. The open letter from the women's organizations called for policy that tackles the underlying cause of the desire for abortion. This cause lies in 'a situation of injustice and discrimination against women and girls'. Arnold Koper, a columnist in another national newspaper, did not beat about the bush and stated firmly that 'if a culture is sexist, it should be opposed' (Koper, 1997).

The Minister's reaction to the debate was a commitment to investigate whether abortion clinics had stretched the notion of a 'critical situation' beyond tolerance. That investigation has since been completed and there appears to be no question of elasticism; the procedures are correctly employed, and hence there is no reason to tighten the abortion law (De Boer, 1997).

PRAGMATISM RECONSIDERED

The issue seemed settled. Yet, there remain many unanswered questions. The first is: does the practice of SSA occur in the Netherlands? There is little information available. According to the only national survey on the issue, the majority of the Dutch population rejects SSA. The non-representative data on cultural minorities suggest that certain cultural minorities do have a cultural preference for sons, and that women are condemned if they have not (yet) produced a boy. But it is unclear whether they are prepared to accept SSA (Veldkamp Marktonderzoek, 1996). Hence, Ramdas's assumption that Muslims especially would be inclined to practice SSA is not empirically founded. However, the background to the Minister's statement was that she was confronted with a testimony of an abortion practitioner. This doctor said she had received requests for SSA and had performed them (Lower Chamber, 1997). So, the practice clearly does occur in the Netherlands. This gives rise to the next question: does SSA constitute a moral wrong? In the eyes of the participants in the public debate, the majority of the Dutch population and the Minister, it does.¹¹ The question is why is it wrong?

In countries where SSA is a widespread phenomenon, such as India and China, it is the expression of a cultural view in which women are of less value than men (see Warren, 1985; Parikh, 1990; Arora, 1996). This misogyny is why most people in the Netherlands condemned SSA as morally wrong. Yet, as Mary Anne Warren rightly observes, 'an action may be morally questionable, and yet something which the agent has a moral

right to do' (Warren, 1987: 195). Didn't feminists think that women have a right to choose?

Although the Dutch abortion law does not reflect a straight pro-choice position, let us for the sake of argument assume that it is pro-choice. Even a policy that takes women's right to choose as paramount does not automatically mean SSA would be permissible. This is because in liberal pro-choice justifications, the right to choose is never understood as an unqualified right to do with one's body as one pleases. It is usually assumed that in the early stages the foetus is not a person and therefore has no moral rights (to life and to equal treatment). However, in the later stages of development, when the foetus becomes sentient, which is somewhere in the second trimester, although not yet a constitutional person, it does have moral standing (see Sumner, 1997). SSA can be performed in the second trimester. It is therefore unclear whether the foetus should be considered as possessing the capacity for sentience. If the foetus is not yet considered a sentient being, then the only constitutional person present in this case would be the woman. Therefore, her right of autonomy should take precedence. If the foetus is considered to have acquired sentience, then an abortion would need a strong justification. Could a cultural sex preference possibly qualify as a compelling enough reason? In the case that the Minister referred to in her challenged statement, there was mention of threats; apparently the woman had reason to fear for her marriage or her life. What may lay behind this? Let us turn to India.

In India, where SSA takes place on a large scale, it is in particular the urban middle classes that take to the practice (see Retherford and Roy, 2003, UNFPA, 2003).¹² An effect of India's population control campaigns is that a large family has become unfashionable among these classes. The ideal family size is two children. SSA is a way to ensure that they have a small family, yet at least one son (see Arora, 1996; Patel, 1996). A reason for son preference is that daughters are considered an economic burden, basically because they leave the family when they marry and must be provided with an expensive dowry, while sons are expected to look after their parents in old age (see Narayan, 1997). Next, in a family that already has daughters, the birth of yet another daughter may decrease the prospects of these daughters to make a good marriage, because the family lacks the economic resources to provide their daughters with the dowry this requires, and thus bring shame on the household (Patel, 1996). Women that decide on an abortion are said to be responding to severe family pressure to produce a son (see Parikh, 1990). Given this background, one is inclined to agree with Warren when she states that 'in a highly patriarchal society, sex selection (...) may be an extremely compelling reason [for abortion] from the viewpoint of the individuals who must make the decision' (1985: 105). In a similar vein, Gail Weiss argues that it is family interests and community normative practices that make it appear to be a desirable and, for many, the

only viable option (Weiss, 1995: 202, 213). SSA would then be allowed; there would be a 'critical situation' as intended by the Dutch abortion law.

On the other hand, this perspective adds a particularly bitter edge to Rosalind Petchesky's remark that 'the "right to choose" means very little when women are powerless. (...) Women make their own reproductive choices, but (...) they make them under social conditions and constraints which they, as mere individuals, are powerless to change' (Petchesky, 1980, quoted in Katz Rothman, 1991: 174). We should be wary therefore, as Dolly Arora warns, of techniques like SSA. What appears initially to increase individual choice, can, in effect, become an instrument of male control over the reproductive rights of women in patriarchal and authoritarian cultures (see Arora, 1996: 421). As the technology that facilitates sex-selective abortion does not lead to women's increased freedom and well-being, the appropriate response would then be to withhold access to it. SSA would simply not be an option that required consideration. This is also suggested by Warren, when she writes: 'the more powerful the social pressures upon women to have sons, the more room there is to doubt that they are really free to choose or reject SSA, and, perhaps, the stronger the argument for prohibition' (1987: 195, 196).

TOLERANCE, AUTONOMY, AND OPPRESSION

Most proponents of multiculturalism do not advocate unconditional license for a cultural group to live according to its own traditions. Tolerance is, amongst other things, conditioned by the right to autonomy; individual group members must be free to choose whether or not to follow tradition. Discussing female circumcision, Bhikhu Parekh, for instance, argues that we should not allow it to be practised on children (2000: 275–8). But when it concerns adult female circumcision, we should make an exception, 'when the demand for it is genuinely voluntary and based on deeply held moral beliefs' (2000: 279). So, for multiculturalists, an important criterion for the tolerance of a cultural practice is whether this practice is freely chosen.

It could be supposed that SSA is a medical intervention which women would not request voluntarily. Ramdas argued this point (see above). But this seems very much like saying that if a woman takes a decision that runs counter to the majority culture's sense of what is right and just, it cannot be her decision. It must be imposed by an outside source – her husband, her culture, her religion. As a result, we need not take her wishes seriously. In contrast, we should take seriously the decisions of women who, for instance, are pressured by poverty, as in Ramdas' example of an unemployed woman seeking an abortion. Ramdas' argument assumes that western women are fully autonomous in their decision-making, while women from non-western

cultures, as victims of their culture, are not. We could counter-argue that all of us are shaped by our cultures and furthermore that not all western women are as fully autonomous as he assumes. And that his example of the unemployed woman illustrates once again that we need social rights to turn rights to freedom into substantive rights. However, this counter-argument does not answer the question he raises about the moral agency of women from non-western cultures.

In the case referred to by the Minister, the abortion practitioner had established in the individual interview prescribed by the Dutch abortion legislation that the woman concerned was genuinely convinced that she wanted this abortion. Still, we may have serious doubts whether her freedom to choose was not curtailed (as she apparently had to fear for her marriage and even her life). From this I would not infer, however, as Ramdas did, that she was but a brainwashed victim of her culture, who therefore may be ignored as a moral person. There is, first, the social and cultural context to consider. With Weiss, I would like to keep open the possibility that women who decide to undergo a SSA do so in good faith, because they think that by doing so they are saving their family from devastating economic burden (cf. Weiss, 1995: 214).¹³ Second, women who contemplate SSA, experience, most likely, great family pressure to comply. This means, however, that their right of autonomy is curtailed, not their mental capacity for autonomy.¹⁴

Yet, the question remains: what weight should we give to these considerations? Obviously, the choice for a SSA is made under severe constraints. Should this lead to an amendment of the abortion law in the Netherlands so as to prevent SSA?

PREVENTATIVE MEASURES AND THE WEIGHT OF CONTEXT

SSA violates the principle of sexual equality; it denies female foetuses an equal right to life. It therefore constitutes a moral wrong in the eyes of the Dutch, including mine. Yet, from this does not follow that the abortion law must be tightened. This is because the principle of sexual equality conflicts in this case with the autonomy of women. Tightening the abortion law so as to prevent SSA would require the formulation of general criteria for what counts as a morally acceptable reason for an abortion, as well as require the scrutinizing of all women's reasons for choosing abortion. This would amount to a major violation of the autonomy of all women that request an abortion.

This seems an undesirable option. The rationale of current Dutch practice is that it tries to *prevent* SSA not by restricting access to abortion, but by *restricting access to pre-natal diagnostic technology* that determines

the sex of the foetus. This does not fully exclude misuse of the abortion law to obtain a SSA. So it only partially succeeds in upholding the principle of sexual equality. It clearly does not give equal respect to cultures that do not recognize the equality of men and women. However, it does acknowledge that women have the right to control their own bodies. Given the likelihood that in the Netherlands SSA hardly occurs, the current Dutch policy practice seems to strike a reasonable balance between the different competing principles.

In the Indian context, however, current Dutch rules and legislation on PND and abortion would clearly be insufficient. As mentioned before, SSA is widely practised in India, even to a point that, in some Indian states, the male–female ratio is adverse (see UNFPA, 2003). We know that individual women are pressured to have a SSA, while as compared to the Netherlands their exit-options are limited, as there are hardly any institutional structures that enable women to leave oppressive domestic relationships (see Narayan, 1997). Given this situation, there is ample reason for stricter legislation. In fact, India has sought to ban SSA – as, in the Netherlands, not through tightening the abortion law, but through restricting access to PND. PND may only be used for the purpose of detecting genetic anomalies or other sex-linked disorders of the foetus. Private clinics have to be registered and monitored. Moreover, the Indian legislature has recently sharpened the PND Act through an amendment that came into force from February 2003.¹⁵ In India, it is lack of public support for the law, i.e. the strong cultural preference for sons, and in relation to that problems with the enforcement of the law, that explains why SSA is still so widely practised.

Hence, while we grudgingly tolerate in the Dutch context that some women may misuse PND and the abortion law for obtaining a SSA, this tolerance is impossible to uphold in the Indian context. One might well ask if this is not a morally inconsistent position to hold. Why this does not amount for contextualists to moral inconsistency is well explained by Parekh. He argues:

We might feel that in the light of a society's history, traditions of inequality of power and cultural ethos, . . . practices [like voluntary adult female circumcision, polygamy, sale of body parts or *sati*] are likely to be misused, fail to realise their intended purpose, or lead to unacceptable long-term consequences, and should be banned. Since consequences play an important part in our assessment of a practice and since they are historically contingent, we might ban it in one society, or at one time in its history, or under one set of circumstances, but not another without incurring the charge of moral inconsistency. (Parekh, 2000: 293–4)

In the Dutch context we can afford to live with rather lenient rules on PND, while in the Indian context clearly stricter rules are required.

CONCLUSION AND DEBATE

Trevor Phillips was right to note that Dutch tolerance of immigrant minority cultures has declined in the past period. That is not to say that state interference in the traditions of cultural minorities is never in place. Certain minority practices do violate their female members' rights and interference might in some cases be warranted.

SSA is practised, albeit probably only on a very small scale, by immigrant minorities in the Netherlands, probably not by Muslims. Whether SSA is practised in other European countries, and on what scale, we do not know, as it is not registered. We do know, however, that in other western countries with minorities from countries where SSA is prevalent, some of these immigrants desire SSA (for the USA see Weiss, 1996, for Canada, see Minister of Government Services Canada, 1993). We may expect therefore, as the legal rules on PND and abortion in most European countries do not exclude SSA, that it does occur.

In the Dutch debate on SSA, a cultural preference for sons was construed as an irrational preference, springing from a backward sexist culture, and minority women got depicted as victims of that culture. Yet, a contextual analysis of SSA leads to a dramatically different picture. My excursion into the practice of SSA in India showed some of the intricacies of culture, modernity and gender inequality. SSA is possible, first, because of the existence of modern PND techniques, and practised not by the poorest, most backward part of the population, but by the urban middle class. Second, the dowry system plays an important role in the motives of Indian women to choose a SSA. Yet dowries have become so expensive because an increasingly market-dominated modern economy led to the commercialization of the dowry system (Narayan, 1997: 110–11). If we take into consideration the wider context in which Indian women choose a SSA, their motives appear neither irrational nor immoral. SSA is morally wrong, yet individuals that choose SSA are not necessarily morally inferior to those who do not (have to) make that choice.

When I argued that it is not desirable to restrict access to abortion in the Netherlands, this is not because I think that requests for a SSA spring from a harmless cultural tradition. SSA, by not granting female foetuses an equal right to life, constitutes in my view a moral wrong. Yet, the moral dilemma for the legislature is that amending the abortion law, so as to make SSA impossible, would inevitably amount to a serious infringement of the autonomy of all women that ask for an abortion.

I argued that preventing SSA by restricting access to abortion is therefore an undesirable option and that the legislature in the Netherlands, as in India, was correct to seek to ban SSA not by restricting access to abortion, but to PND. The difference is that Dutch rules on PND are rather more

lenient than those in India. Again, I think this is justified, because in the Dutch situation, SSA in all likelihood hardly occurs, while in India it is practised on a large scale. One might ask if we should condone in the Netherlands what we try to fight with all our power in India. I argued that we may – as in a contextual approach, non-moral considerations may co-determine our moral judgement.

While the current Dutch rules and legislation on PND and abortion do not require any change, this is not to say that all is peaches and cream in minority cultures in the Netherlands. We know no more about the woman that the Dutch Minister referred to in her statement than that she had to fear for her marriage or even her life if she did not consent to a SSA. Neither do we know why the abortion practitioner that interviewed her still considered her choice to be a free choice. We do know, however, that a decision to undergo a SSA is usually taken under severe social constraints and that the roots of the problem lie, as the women's organizations in the Netherlands correctly pointed out, in the patriarchal cultural traditions that make daughters the undesired sex. PND legislation does not tackle this cause. Similarly, the PND Act in India is ineffective because it lacks public support; people seek ways to circumvent it. Of equal importance therefore is public social policy aimed at tackling the causes of son preference, like the dowry system, against which the Indian government has campaigned (Narayan, 1997). It is encouraging therefore that son preference is declining in almost all Indian states (Retherford and Roy, 2003: 4), as it suggests that these policy measures do have an effect. To come back to the woman in the Dutch case: we do not know about her circumstances, but it is easy to imagine that an isolated immigrant woman is not in a situation to make full use of her right of autonomy. Obviously, more is needed than merely the prescribed interview to ensure that her choice is freely made. To enhance her autonomy against her family's pressure, her isolation should be lifted, so that she is informed about her rights. These should minimally include a secure residence status, so that she knows that, in case of a divorce, she is allowed to stay, and retain custody rights over her other children.

Lastly, let me come back to the relation between feminism and multiculturalism. SSA is a case in which autonomy and gender equality conflict and one in which respect for cultural diversity conflicts with gender equality. If we put the autonomy of women first, then we should also accept a woman's possible culturally inspired desire for a SSA. Respect for cultural diversity is thus linked to autonomy. As autonomy and equality are both principles feminists endorse, contrary to my initial intuition, it is rather difficult to perceive of this case as one in which feminism and multiculturalism conflict. The general message this case holds for me is that feminism cannot be an *a priori* moral position that tells us what is right and what is wrong. In each case, reaching a coherent feminist position requires hard

work. The claim that feminism and multiculturalism conflict is wrong simply because it is too general. So, yes, we need moral arguments, but no, we can do without fixed moral positions.

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Notes

- 1 He must be misinformed here, because to my knowledge there was never any policy intention to combat arranged marriages. But there is policy, which is now being implemented, to discourage marriages with a spouse from the (non-EU) country of origin.
- 2 As far as the schools are concerned this is a rather complex claim, because there are several public/private distinctions to consider. In the case of denominational, i.e. non-public, schools, their right to maintain their religious identity is understood to include the right to forbid the headscarf. Public schools do not have that right. There was, at the time of Phillips' visit, discussion about the *niqaab*, a form of veiling that covers the face. The Minister of Education issued a guideline that allows educational institutions, public and private, to forbid the wearing of the *niqaab*. The main reason for schools to forbid the *niqaab* is that the bearer excludes herself from the school community because she no longer has a public identity (Duursma, 2003).
- 3 Pim Fortuyn was the leader of a political party, the Lijst Pim Fortuyn (LPF), who considered Islam 'a backward culture', who opined that the first article of the Dutch constitution, i.e. the anti-discrimination article, should be removed and who was assassinated, in May 2002, by an animal welfare activist. After his death, the LPF overwhelmingly won national elections with an anti-immigration program. Although the decline of the LPF then set in quickly, its initial rise is considered by many in the Netherlands as an expression of the dissatisfaction of the public with Dutch politics, with Dutch immigration and Dutch minority politics in particular. The minority policy was perceived as being too soft, minorities would be 'pampered' and it was suggested that under the banner of respect for cultural diversity tolerance had gone too far. At this moment a parliamentary investigation has been completed about the failing of Dutch minorities policy.
- 4 Yet this appears to be a gradual process, which is not necessarily occasioned by recent events. The polls cover a period from 1991 to 2002. It is still too early to measure a 'Fortuyn' effect, but there is no sudden dip in the attitude of the Dutch towards minorities between 2000 and 2002. Hence, there is no visible 'September 11 2001' effect.

- 5 See, for a more extensive account, the mentioned literature and also Saharso and Bader, 2004.
- 6 SSAs are usually performed in the second trimester of pregnancy because pre-natal diagnosis cannot be conducted earlier. See for technical information Saharso, 1999.
- 7 Other PND techniques are the triple test and the measuring of the cervical crease. The first is a blood test, while the second is done through ultrasound. Their aim is to detect serious genetic diseases or congenital anomalies. As the predictive value of these tests is between 60 and 80 percent, the standard procedure is, when the test results point to the presence of an anomaly, to further determine this through chorionic villus sampling or amniocentesis. Therefore I shall not further consider the triple test and the measuring of the cervical crease.
- 8 It is currently being discussed in the Netherlands whether the rules for commercial clinics that offer ultrasound, triple tests and measuring of the cervical crease should be tightened. This is inspired not by the wish to make it impossible to detect the foetus's sex, but to prevent these clinics from referring pregnant women wrongfully (based on a false-positive test result) for further PND in a hospital. This not only leads to unnecessary expenditures on public health, but also to unnecessary miscarriages, as amniocentesis and chorionic villus sampling do carry a certain risk (Peeperkorn and de Visser, 2003).
- 9 Note, however, that the Dutch abortion law does not reflect a straightforward pro-choice position. The law is a hard-won compromise between the liberals and social democrats, who endorsed a pro-choice position, and the Christian democrats, who endorsed a pro-life position. According to the law, it is the woman who decides, but at the same time the procedures of the law (the requirement of a justification in terms of the woman's life or health, the five-day waiting period that the woman is obliged to observe) recognize the view that at every stage of development the foetus does have a moral status that should be weighed alongside (but not necessarily outweigh) the woman's interest in controlling her own body. For a full historical account of the Dutch abortion law, see Outshoorn 1986.
- 10 I have examined the reactions in three national daily newspapers that, when taken together, offer a reasonable picture of the political spectrum in the Netherlands: *Trouw* (Christian), *De Volkskrant* (social democratic) and *NRC Handelsblad* (liberal). In addition, I consulted reactions in *Contrast*, a weekly magazine on multicultural society; an open letter dated 20 January 1997 sent to the Minister by the Vrouwenberaad Ontwikkelingssamenwerking (Women's Council on Development Aid), AISA, TARGUIA and TIYE International, which together form the most important national organizations of and for black, migrant and refugee women; lastly, the reaction of the Pro Life (Consultative) Platform (PLOP), contained in a letter dated 29 August 1997 sent to the Permanent Parliamentary Commission on Health in connection with the investigation commissioned by the Minister on whether there is any need to tighten up the law on abortion (PLOP, 1997). The majority of anti-abortion groups are represented in PLOP.
- 11 Minister Borst again made it clear that she considers the use of pre-natal technology for sex selection on non-medical grounds as an undesirable

development through her decision, taken in June 1998, to close down the gender clinic that offered sperm treatment with assisted insemination – which is yet another way to influence the sex of the foetus (*De Volkskrant*, 1998).

- 12 It is estimated that over a million SSA's were performed in India during the period 1981–91. One should realize, however, that, as Das Gupta and Mari Bhat (1998: 90) remind us, statistically this figure is not very large – it represents less than 1 percent of female births in that decade. Still, we should not feel reassured by this, as it means that, as again Das Gupta and Mari Bhat (1998) point out, 'excess female child mortality after birth continues to be the dominant practice in removing female children in India'.
- 13 Weiss herself therefore prefers to see SSA as a 'moral mistake', so as to acknowledge that individuals who have chosen SSA are not acting in an irresponsible manner, but 'are making their decision in the light of moral considerations regarding how best to secure the material interests of their families' (Weiss, 1995: 214).
- 14 This distinction between the right to, and the capacity for, autonomy is further elaborated in Saharso (2000).
- 15 Under the new Act, a person who seeks help for sex selection risks imprisonment for a three-year period and can be required to pay a fine of Rs. 50,000. The medical practitioner involved risks the State Medical Council removing his or her name from the Council's register (see UNFPA, 2003).

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Culture or inequality in sex-selective abortion?

A response to Sawitri Saharso

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Sawitri Saharso's article on sex-selective abortion amongst minority populations in the Netherlands comes at an important moment: immigration and the issue of integration of immigrant and minority populations occupy a central place in both public discourse and policy-making European-wide. Indeed, the issues of immigration and integration have played a significant role in election outcomes across Europe. Saharso goes to the heart of the matter in addressing the role of women and gender, which occupies a pivotal place in the debate over immigration. Not unlike the colonial era, when the perceived oppression of women in colonized regions was used as a benchmark of the barbarity of that culture in contrast to the modernity of the West, today, a similar process is occurring in the post-colonies. As Saharso points out, a concern with gender inequality often functions as a proxy for anti-immigrant and or anti-Muslim discourses and practices. She argues convincingly that feminism requires a contextual approach, one that allows no easy a priori moral positions. This approach leads her to suggest that access to abortion as well as pre-natal diagnostic techniques should be available equally to all women in the Netherlands, wherever they come from, and whatever they believe, and whether or not some choose to use it to abort female fetuses in favour of males. This call for equal access, she suggests, is largely because in the Netherlands, sex selective abortion has not been proven to be a common practice; hence women's right to autonomy trumps the risk of undermining sexual equality.

I generally agree with Saharso's conclusions, and, in particular, I agree with her suggestion to enhance immigrant women's ability to make choices by securing their residency status, and informing them of their rights, rather